



**Transportation
Security
Administration**

November 30, 2011

3600.1

FOIA: TSA10-0789, TSA11-0110

Mr. Edward Hasbrouck
1130 Treat Avenue
San Francisco, CA 94110
Edward@hasbrouck.org

Dear Mr. Hasbrouck:

This letter is in response to your August 17, 2010 Freedom of Information Act (FOIA) request that was submitted to the Department of Homeland Security (DHS). DHS referred your request to the Transportation Security Administration (TSA) on August 26, 2010, in which you sought access to and copies of any and all documents and records created by DHS or other agencies or departments in the course of processing, investigating, or action on your complaint of FOIA and Privacy Act violations, including, but not limited to:

1. DHS Privacy Office;
2. DHS Office of the Inspector General;
3. Offices who receive e-mail addressed to DHSOIGHOTLINE@dhs.gov, foia.tsa@dhs.gov, foia@dhs.gov, privacy@dhs.gov, TELLTSA@dhs.gov, TSA-ContactCenter@dhs.gov, or who receive communications from or are responsible for liaison with or supervision of contractors who receive such mail;
4. Any other office or agency which was consulted or contacted by those offices, or by other DHS Offices in the course of processing, investigating, or action of your complaint; and
5. Any other office, agency, or department identifiable as having or likely to have responsive records.

Your request has been processed under the FOIA, 5 U.S.C. § 552.

A reasonable search within the TSA was conducted and 34 pages responsive to your request were located. In addition, 22 pages of responsive documents were referred by DHS for processing and direct response to you. These documents have been reviewed and portions of the pages are being withheld pursuant to FOIA Exemptions (b)(2), (b)(5) and (b)(6). A more complete explanation of these exemptions is provided below.

Exemption (b)(2)

Exemption (b)(2) exempts from mandatory disclosure records that are “related solely to the internal personnel rules and practices of an agency.” We have determined that certain portions of the requested records contain personnel rules and/or internal practices of the TSA and are thus properly withheld from disclosure under this exemption.

Exemption (b)(5)

Exemption (b)(5) protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. Of those, we have determined that some of the information in the documents you have requested is appropriately withheld under the deliberative process privilege. Under the deliberative process privilege, disclosure of those records would injure the quality of future agency decisions by discouraging the open and frank policy discussions between subordinates and superiors.

We have also determined that information in the documents you have requested is appropriately withheld under the attorney-client privilege. The attorney-client privilege protects the communications between an attorney and his/her client relating to a matter for which the client has sought legal advice, as well as to protect facts divulged by client to attorney and any opinions given by attorney based on these facts.

Exemption (b)(6)

Exemption (b)(6) permits the government to withhold all identifying information that applies to a particular individual when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” This requires the balancing of the public’s right to disclosure against the individual’s right to privacy. After performing this analysis, we have determined that the privacy interest in the identities of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Please note that any personal interest you may have in that information does not factor into the aforementioned balancing test.

Fees

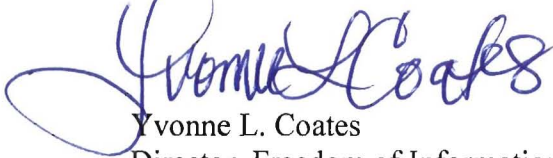
The fees incurred to process your request do not exceed the minimum threshold necessary for charge and, therefore, there are no fees associated with processing this request.

Administrative Appeal

In the event that you may wish to appeal this determination, an administrative appeal may be made in writing to Kimberly Walton, Special Counselor, Office of the Special Counselor, Transportation Security Administration, 601 South 12th Street, East Building, E7-121S, Arlington, VA 20598-6033. Your appeal **must be submitted within 60 days** from the date of

this determination. It should contain your FOIA request number and state, to the extent possible, the reasons why you believe the initial determination should be reversed. In addition, the envelope in which the appeal is mailed in should be prominently marked "FOIA Appeal." Please note that the Special Counselor's determination of the appeal will be administratively final. If you have any questions pertaining to your request, please feel free to contact the FOIA Office at 1-866-364-2872 or locally at 571-227-2300.

Sincerely,



Yvonne L. Coates
Director, Freedom of Information Act Office
Office of the Special Counselor
Transportation Security Administration

Enclosure

(b) (6) <TSA OCC>

From: Janet, Kevin <TSA FOIA>
Sent: Thursday, December 17, 2009 3:14 PM
To: 'Edward Hasbrouck'
Subject: RE: (Fwd) Re: TSA10-0134

Thank you for pointing out that inadvertent oversight. We have taken corrective action where necessary. Our correct address is TSA, FOIA Office, TSA20, 601 S. 12th Street, Arlington, VA 20598-6020.

-----Original Message-----

From: Edward Hasbrouck [<mailto:edward@hasbrouck.org>]
Sent: Thursday, December 17, 2009 3:01 PM
To: Janet, Kevin <TSA FOIA>
Subject: (Fwd) Re: TSA10-0134

----- Forwarded message follows -----

From: Edward Hasbrouck <edward@hasbrouck.org>
To: "Janet, Kevin <TSA FOIA>" <Kevin.Janet@dhs.gov>
Subject: Re: TSA10-0134
Date sent: Tue, 15 Dec 2009 16:16:37 -0800

I noticed on re-reading your latest letter that it says, "You have the right to appeal the determination to deny your fee waiver request. In the event that you may wish to appeal this determination an administrative appeal may be made in writing to Kimberly Walton, Special Counselor, Office of the Special Counselor, Transportation Security Administration, 601 South 12th Street, East Building, E7-12IS, Arlington, VA 22202-4220."

Could you please confirm whether that is in fact the correct current address and zip+4 code, or if not, what is? (And could you please make sure that the boilerplate used in constructing your letters is updated, in all places, to the correct current addresses and zip+4 codes?)

Please reply before the Express Mail acceptance cut-off time, so that I can be sure to send my appeal to the correct address.

Sincerely,

Edward Hasbrouck

----- End of forwarded message -----

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
+1-415-824-0214

Tracking:

Recipient

'Edward Hasbrouck'

Pietra, Peter

Read

Deleted: 12/17/2009 5:30 PM

(b) (6) <TSA OCC>

From: Janet, Kevin <TSA FOIA>
Sent: Tuesday, November 03, 2009 4:37 PM
To: Newhouse, Victoria <TSA OCC>; (b) (6) <TSA OCC>; (b) (6) @dhs.gov
Subject: Re: (Fwd) violations of FOIA by TSA

According to (b) (6) /bldg services, he has instructed USPS to no longer accept 22202 TSA mail and to return to sender. This notice was to go out in a tsa broadcast effective 9/30. It hasn't issued yet. (b) (6) went to the eades post office 10/29 and discovered a voluminous amount of 22202 addressed mail that the PO held for TSA - instead of returning to senders. Thus hasbourck's mail receipt shows it being recvd at eades on 10/16 but not accepted or "entered" by TSA until the 29th. FYI we had our zips corrected on the TSA and dhs .gov sites. I told peter abt his zip code error but there others out there.

From: Newhouse, Victoria <TSA OCC>
To: Pietra, Peter
Cc: (b) (6) <TSA OCC>; (b) (6) <TSA OCC>; Janet, Kevin <TSA FOIA>
Sent: Tue Nov 03 16:21:15 2009
Subject: FW: (Fwd) violations of FOIA by TSA

Including Peter since this complaint discusses updates to addresses in SORNs too.

From: (b) (6) <TSA OCC>
Sent: Tuesday, November 03, 2009 3:39 PM
To: Janet, Kevin <TSA FOIA>; (b) (6) <TSA OCC>; Newhouse, Victoria <TSA OCC>
Subject: RE: (Fwd) violations of FOIA by TSA

Why the delay from 10/15 - 10/23?

(b) (6)
Office of Chief Counsel
Transportation Security Administration
(b) (6) @dhs.gov
571-227-1382
(b) (6) (Mobile)
571-227-1382 (fax)

This communication might contain communications between attorney and client, communications that are part of the agency deliberative process, or attorney-work product, all of which are privileged and not subject to disclosure outside the agency or to the public. Please consult with the Office of Chief Counsel before disclosing any information contained in this email. FILE: 600.1

From: Janet, Kevin <TSA FOIA>
Sent: Tuesday, November 03, 2009 3:37 PM
To: (b) (6) <TSA OCC>; (b) (6) <TSA OCC>; Newhouse, Victoria <TSA OCC>
Subject: RE: (Fwd) violations of FOIA by TSA

When we heard from the requester he was having problems with the mail we located his electronic version of the request in the FOIA mailbox. The requester's electronic version of the Oct 15, 2009 email was opened on the Friday 10/23 and acknowledged by the FOIA Office by letter dated Monday 10/26. In that letter we denied expedited processing but waived any fees associated with the request (none are anticipated).

From: (b) (6) <TSA OCC>
Sent: Tuesday, November 03, 2009 2:12 PM
To: (b) (6) (b) (6) (b) (6) <TSA OCC>; (b) (6) <TSA OCC>; Newhouse, Victoria <TSA OCC>

Cc: Janet, Kevin <TSA FOIA>
Subject: FW: (Fwd) violations of FOIA by TSA
Importance: High

Thanks, (b) (6). We're aware of Mr. Hasbrouck's complaint.

(b) (6)
Office of Chief Counsel
Transportation Security Administration
(b) (6)@dhs.gov
571-227- (b) (6)
(b) (6) (Mobile)
571-227-1382 (fax)

This communication might contain communications between attorney and client, communications that are part of the agency deliberative process, or attorney-work product, all of which are privileged and not subject to disclosure outside the agency or to the public. Please consult with the Office of Chief Counsel before disclosing any information contained in this email. FILE 600.1

From: (b) (6) [mailto:(b) (6)]
Sent: Tuesday, November 03, 2009 1:40 PM
To: (b) (6) TSA OCC
Cc: (b) (6)
Subject: FW: (Fwd) violations of FOIA by TSA
Importance: High

(b) (6)

Our office received a phone call from the requestor below. I gave him a call back and he is not pleased, to say the least, with the FOIA notices that are updated in the Federal Register with regards to TSA's FOIA address being incorrect and many failed attempts to get his FOIA request acknowledged by TSA.

Since the FOIA address at TSA is incorrect in the Federal Register and online, he was not able to send an appeal and he has filed a complaint with OIG regarding the inadequacy of the DHS FOIA process. Apparently, he needed FOIA documents for a Congressional hearing next week on November 10th. Attached is the FOIA request and complaint that he filed.

He also mentioned that he received a verbal confirmation from TSA, but he never received a written confirmation.

Please see his request/complaint for action.

Regards,

(b) (6)

(b) (6)
Staff Assistant
Office of the General Counsel
Department of Homeland Security
(b) (6)

-----Original Message-----

From: Edward Hasbrouck [mailto:edward@hasbrouck.org]
Sent: Tuesday, November 03, 2009 11:03 AM
To: (b) (6)
Subject: (Fwd) violations of FOIA by TSA

Below is the complaint I have sent to the DHS Office of the Inspector General; attached is my original FOIA request, which was sent 15 October 2009 by e-mail to FOIA.TSA@dhs.gov and by postal Express Mail.

Time is of the essence. This material requested is needed in time for the public to learn about it and use it to formulate input to Congress for the confirmation hearings on the nominee for TSA Administrator, one of which

has already been held by the Senate Commerce and Transportation Committee, and the second and probably final of which is scheduled by the Senate Committee on Homeland Security for 10 November 2009, as we have reported (noting our pending FOIA request) on our Web site at:

<http://www.papersplease.org/wp/2009/11/02/tsa-nominee-up-for-senate-questioning-november-10th/>

Any assistance you can provide would be appreciated.

Sincerely,

Edward Hasbrouck

----- Forwarded message follows -----

From: Edward Hasbrouck <edward@hasbrouck.org>
To: DHSOIGHOTLINE@dhs.gov
Subject: violations of FOIA by TSA
Copies to: foia.tsa@dhs.gov, foia@hq.dhs.gov,
privacy@dhs.gov, TellTSA@dhs.gov,
TSA-ContactCenter@dhs.gov, ogis@nara.gov
Date sent: Mon, 02 Nov 2009 10:41:10 -0800

The address of the TSA FOIA office (and, I suspect, the TSA Privacy Act office), and the address for postal submission of FOIA requests to the TSA, have changed without public notice.

The TSA is not currently accepting delivery of FOIA (or, I suspect, Privacy Act) requests sent to their officially designated address.

To my knowledge, this has been the situation at least since October 16, 2009, more than two full weeks ago, and it continues today.

Because the TSA is not accepting delivery of these requests, it is impossible for requesters to obtain confirmation of receipt of their requests. Without evidence of the date of receipt, it is impossible for requesters to appeal constructive denial of their requests, or to litigate constructive denial of requests for expedited processing.

TSA and DHS are required by FOIA and the Privacy Act to publicly designate, through notices in the Federal Register, addresses at which FOIA and Privacy Act requests are accepted. Failure to designate such addresses or to accept delivery at those addresses, or instructing the Postal Service not to deliver requests sent to those addresses, are violations of FOIA and/or the Privacy Act on the part of the responsible DHS and/or TSA officials.

The most recent DHS FOIA regulations, as published in the Federal Register (60 FR 4056-4069, January 27, 2003) and codified at 6 CFR Part 5, list the TSA FOIA address as:

Transportation Security Administration
400 Seventh Street, SW.
Washington, DC 20590

I have been told by phone, on a rare occasion when the TSA FOIA or Privacy Act office answered their phone, that that address is obsolete.

The DHS.gov and TSA.gov Web sites list a different address:

Transportation Security Administration
Freedom of Information Act Office, TSA-20

601 S. 12th Street
11th Floor, East Tower
Arlington, VA 22202-4220

However, I believe that neither of these addresses is correct. The U.S. Postal Service has told me that they were unable to deliver my FOIA request sent by Express Mail to the Arlington address above.

According to the USPS, my Express Mail letter arrived in the Arlington Post Office on October 16, 2009. According to the USPS, the TSA zip code has changed to 20598, and the TSA has instructed the USPS not to deliver mail sent to that address and zip code 22202. Because the TSA has instructed the USPS not to attempt delivery of such mail, the USPS was unable to provide proof of delivery, proof of non-delivery, or proof of refusal to accept delivery, and my letter was not returned to me.

Although this happened to my letter on October 16th, more than two full weeks ago, no new TSA or DHS FOIA notice, no new TSA Privacy Act SORN for any system of records, and no update to the TSA or DHS FOIA regulations in 6 CFR Part 5 has yet been published in the Federal Register.

I presume that TSA was aware that their address was to be changed, and that it had been changed, and could have published notices of changes in advance on their Web sites and in the Federal Register. Standard operating procedures for compliance with FOIA and the Privacy Act should have provided for the issuance and publication in the Federal Register of a new FOIA notice, updates to the FOIA regulations in 6 CFR Part 5, and new SORNs, *prior* to the effective date of the change of address, and special care in instructing the USPS and TSA mailroom staff to ensure that requests continued to be delivered without interruption.

Since that was not done, and until it can be done, the USPS and other carriers should have been directed to continue delivery of requests sent to the officially designated addresses. The DHS and TSA have an affirmative legal duty under FOIA and the Privacy Act to promulgate valid addresses and ensure that they accept delivery of requests sent to those addresses. To direct that requests be sent to an address that, by TSA directive to the Postal Service, has been rendered a "black hole", constitutes de facto summary, secret denial of all such requests.

My FOIA request -- sent by e-mail and Express Mail on October 15, 2009 -- included a request for expedited processing. Under FOIA, the TSA was required to make a decision on that request for expedited processing within 10 days, that is, by October 25, 2009. Although I was eventually told by telephone that my request was received by the TSA FOIA office, and I have been promised postal and e-mail confirmation of receipt by the TSA FOIA office, I have yet to receive any written or electronic confirmation.

Under FOIA, I was entitled to commence litigation to challenge the constructive denial of my request for expedited processing 10 days after the receipt of my request. But since the TSA's refusal to accept delivery has made it impossible for me to prove when my request was received, it effectively bars the courthouse door, and prevents me from seeking judicial review of their constructive denial, or administrative review (if they had actually responded), until they provide confirmation of when they received my request.

This is an extremely grave due process violation. Until corrected through proper new federal register notices and instructions to the USPS and other delivery services, it categorically precludes FOIA and perhaps also Privacy Act requests and appeals or litigation of constructive denials.

Instead of having been able to commence litigation October 25th (if they confirmed receipt of my e-mail on October 15th) or October 26th (if they signed for my Express Mail letter on October 16th), I am still waiting for written confirmation of receipt of my request.

I believe that these actions clearly constitute mismanagement by the DHS and TSA, and violations of FOIA and probably also the Privacy Act.

I request that the Office of the Inspector General investigate this complaint and bring appropriate enforcement action for sanctions against the responsible DHS and/or TSA officials.

Even if these violations were to be corrected by new notices in the Federal Register tomorrow, the damage of several weeks during which the TSA refused to accept properly addressed FOIA requests has been done, and I request that you proceed with your investigation of this complaint.

Most requesters, of course, will not even know that their request was not delivered, and may never know why they never receive a response. As part of your investigation, I request that you attempt to determine how many other such requests may not have been delivered. And I urge that the TSA and DHS be required, as part of their mitigation of their violations of the law, to publish prominent notices -- through their usual press release distribution channels and on the DHS and TSA home pages and FOIA and Privacy Act Web pages -- that requests may not have been delivered, and advising past requesters of the need to re-send their requests.

My request for expedited processing was made as a journalist, and I have reported publicly on this incident at:

<http://www.papersplease.org/wp/2009/10/27/tsa-sends-our-foia-request-into-a-black-hole/>

Please reply to confirm your receipt of this report and complaint, and any tracking or reference number assigned to this complaint and/or to your investigation. Please advise me of the outcome of this complaint and provide me with a copy of any report produced by your office in response to this complaint and your investigation. Please feel free to contact me if you need any additional information from me, or if I can be of any assistance to you in investigating and prosecuting this complaint.

I am also copying this complaint to the TSA and DHS privacy offices, with a request that it be logged in TSA and DHS complaint statistics, investigated, and acted on as a complaint of violation of FOIA and potentially the Privacy Act by TSA and DHS officials.

Sincerely,

Edward Hasbrouck
1130 Treat Ave.
San Francisco, CA 94110
telephone 415-824-0214

----- End of forwarded message -----

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
1130 Treat Ave., San Francisco, CA 94110, USA
+1-415-824-0214

consultant to The Identity Project (IDP),

a program of the First Amendment Project
<<http://www.papersplease.org>>

"Congress shall make no law ... abridging ... the right of the people peaceably to assemble" (U.S. Constitution, Amendment 1)

"Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country."
(Universal Declaration of Human Rights, Article 13)

"Liberty of movement is an indispensable condition for the free development of a person."
(United Nations Human Rights Committee,
General Comment No. 27)

(b) (6) <TSA OCC>

From: Janet, Kevin <TSA FOIA>
Sent: Wednesday, December 16, 2009 10:01 AM
To: Holzerland, William
Subject: FW: TSA10-0134

fyi

-----Original Message-----

From: Edward Hasbrouck [<mailto:edward@hasbrouck.org>]
Sent: Tuesday, December 15, 2009 5:53 PM
To: Janet, Kevin <TSA FOIA>
Subject: Re: TSA10-0134

On 15 Dec 2009 at 14:57, "Janet, Kevin TSA FOIA" <Janet, Kevin TSA FOIA
<Kevin.Janet@dhs.gov>> wrote:

> Per our conversation. Thank you.

Thnaks very much. Since it wasn't mentioned in your letter, could you please also confirm receipt of our complaints, which were included with our FOIA request, of (1) violation of FOIA and (2) probable criminal violation of the Privacy Act by TSA employees, advise me of the person or office to whom they have been referred for investigation and enforcement (including criminal investigation and enforcement) and corrective action, and confirm that these complaints will be included in TSA and DHS reporting of complaints of both FOIA violations and (criminal) Privacy Act violations by the TSA.

Sincerely,

Edward Hasbrouck

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
1130 Treat Ave., San Francisco, CA 94110, USA
+1-415-824-0214

consultant to The Identity Project (IDP), a program of the First Amendment Project
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(United Nations Human Rights Committee, General Comment No. 27)

(b) (6) <TSA OCC>

From: FOIA [FOIA@HQ.DHS.GOV]
Sent: Monday, November 02, 2009 2:18 PM
To: Holzerland, William
Subject: FW: violations of FOIA by TSA

Bill - FYI. See below.

Regards,

Emily Lantz
FOIA Specialist
McNeil Technologies, Inc.
Supporting the Privacy Office
U.S. Department of Homeland Security

(b) (6)
F: 703-235-0443

(b) (6)

-----Original Message-----

From: Edward Hasbrouck [<mailto:edward@hasbrouck.org>]
Sent: Monday, November 02, 2009 1:41 PM
To: DHSOIGHOTLINE
Cc: FOIA; FOIA; Privacy; TellTSA; TSA-ContactCenter; ogis@nara.gov
Subject: violations of FOIA by TSA

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Please reply to confirm your receipt of this report and complaint, and any tracking or reference number assigned to this complaint and/or to your investigation. Please advise me of the outcome of this complaint and provide me with a copy of any report produced by your office in response to this complaint and your investigation. Please feel free to contact me if you need any additional information from me, or if I can be of any assistance to you in investigating and prosecuting this complaint.

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Sincerely,

Edward Hasbrouck
1130 Treat Ave.
San Francisco, CA 94110
telephone 415-824-0214

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
+1-415-824-0214

(b) (6) <TSA OCC>

From: Web Publishing [WebPublishing@HQ.DHS.GOV]
Sent: Monday, November 02, 2009 2:52 PM
To: Holzerland, William; Web Publishing
Cc: Papoi, Catherine
Subject: RE: FOIA contact page update

This message has been archived. View the original item

Corrected! Can't have requests refused because of bad ZIP codes:

http://www.dhs.gov/xfoia/Copy_of_editorial_0318.shtm

(b) (6)
Web Editor

Department of Homeland Security

(b) (6)

(b) (6)

<http://ww>

(b) (6) <TSA OCC>

From: Bird, Rose M (b) (6)
Sent: Friday, January 01, 2010 10:37 PM
To: Holzerland, William; Pietra, Peter; Bird, Rose M; Janet, Kevin TSA FOIA
Cc: Papoi, Catherine
Subject: Re: Complaint from Edward Hasbrouck dated 12/16/09

Thanks that would be great.

From: Holzerland, William (b) (6)
To: Pietra, Peter; Bird, Rose M (b) (6); Janet, Kevin TSA FOIA
Cc: Papoi, Catherine (b) (6)
Sent: Fri Jan 01 19:47:43 2010
Subject: Re: Complaint from Edward Hasbrouck dated 12/16/09

(b) (5) I would be glad to take the first crack at drafting something up and circulate it for comments/edits.

William H. Holzerland, CIPP/G
U.S. Department of Homeland Security
Associate Director,
Disclosure Policy & FOIA Program Development

(b) (6)

----- Original Message -----

From: Pietra, Peter <Peter.Pietra@dhs.gov>
To: Holzerland, William (b) (6); Bird, Rose M (b) (6); Pietra, Peter; Janet, Kevin TSA FOIA
Cc: Papoi, Catherine (b) (6)
Sent: Fri Jan 01 18:34:51 2010
Subject: RE: Complaint from Edward Hasbrouck dated 12/16/09

Lets talk next week. (b) (5)

(b) (5)

-----Original Message-----

From: Holzerland, William [mailto:(b) (6)]
Sent: Wed 12/30/2009 1:56 PM
To: Bird, Rose M; Pietra, Peter ; Janet, Kevin <TSA FOIA>
Cc: Papoi, Catherine
Subject: Complaint from Edward Hasbrouck dated 12/16/09

All,

FYI, please see attached complaint from Edward Hasbrouck, dated 12/16/09, received today - again dealing with the issue of TSA's published address. Mr. Hasbrouck also states in the complaint he sent this to OIG via email and regular mail, so I have not copied them on this message. Though he states he also sent it to TSA's privacy office, the TSA mailing address does not appear in the address area of this letter. Mr. Hasbrouck stated this complaint is the same one sent via email to dhsoighotline@dhs.gov, foia.tsa@dhs.gov, foia@hq.dhs.gov on 11/2/09 (attached) and that the US Postal Service received the complaint as well and referred it to the USPS Office of Inspector General. Furthermore, Mr. Hasbrouck stated he has "repeatedly" reported his complaints to the aforementioned addressees via telephone. Though not included in the most recent complaint, he informed me verbally via phone on 12/17/09 that he has allegedly sent identical complaints to privacy@dhs.gov and they've also gone unacknowledged.

In his complaint, Mr. Hasbrouck requests the OIG and PRIV do several things. Below is a non-exhaustive list of things Hasbrouck wants:

- * Investigate his complaint and bring appropriate enforcement action against the responsible DHS and/or TSA officials
- * Attempt to determine how many FOIA/PA requests may not have been delivered when TSA's zip code changed
- * Publish prominent notices (including press releases, dhs.gov and tsa.gov pages, and Departmental and TSA FOIA/PA webpages) that requests may not have been delivered and advise past requesters to resend their requests
- * Reply to confirm receipt of this complaint and advise him of tracking/reference number assigned to it
- * Advise him of the outcome of his complaint and provide him with a copy of any report produced in response to it
- * Confirm this complaint has been logged "as a complaint of violation of FOIA and the Privacy Act, and will be included in (our) reporting of statistics regarding such complaints"

At any rate, we updated the www.dhs.gov/foia webpage with the correct zip code within minutes of this being brought to our attention on 11/2/09. TSA FOIA also updated their webpage as soon as they learned of this issue. (b) (6)

His principal complaint seems to be that requests may not have been delivered/received in the mail in between the time the zip code changed and the time the webpage was updated. However, all of this stems from his request dated 10/15/09 for the TSA screening SOP. Mr. Hasbrouck has published vivid details about the submission of this request, his request for expedited processing, responses received from TSA in response to his request for expedited processing, etc. here: <http://www.papersplease.org/wp/2009/10/27/tsa-sends-our-foia-request-into-a-black-hole/>. So his principal beef is that DHS/TSA is violating his due process rights because he was not able to get a return receipt from USPS for this request. Yet TSA was able to respond to his initial request, timely respond to his request for expedited processing and timely respond to his appeal of the denial of expedited processing - all regarding this exact request received via e-mail. (b) (5)

We've all seen and heard about this same issue from the same requester multiple times, but I am passing on this complaint, as he requests, nonetheless.

Regards,

Bill

William H. Holzerland, CIPP/G

U.S. Department of Homeland Security

Associate Director,

Disclosure Policy & FOIA Program Development

(b) (6)

(b) (6)

<TSA OCC>

From: Edward Hasbrouck [edward@hasbrouck.org]
Sent: Monday, January 04, 2010 2:22 PM
To: FOIA
Cc: Janet, Kevin; Holzerland, William; ogis@nara.gov
Subject: Re: FOIA request address
Attachments: Attachment information.; 10 0179 Acknowledgement Ltr.pdf

Dear FOIA office:

According to your acknowledgment letter for FOIA case TSA10-0179, as attached, "Your request was received in this office on December 24, 2009."

However, that acknowledgement was sent from the same e-mail address (foia.tsa@dhs.gov) to which my request was sent on December 18, 2009.

If "foia.tsa@dhs.gov" isn't received in the FOIA office, where is it received? Where was my request for the 6 days from December 18 to 24?

And most importantly, what e-mail address for FOIA requests, if any, *is* received in the FOIA office without such an inexplicable delay?

It appears that *neither* the e-mail address nor the postal address on your Web site actually is received in your office for almost a week. This is unconscionable, and in violation of FOIA. It is especially egregious and damaging not to have a functional direct e-mail address for FOIA requests when you know that the address in the most recent FOIA notice in the Federal Register and the CFR is entirely incorrect, *and* when you know that due to internal DHS procedures for handling postal mail it is substantially delayed at best, and in some case lost without a trace.

I reiterate my complaint of violation of FOIA, and my demand that you forthwith bring the TSA into compliance with FOIA through the publication of an accurate FOIA notice in the Federal Register, updating the CFR, along with updated SORN's for all TSA systems of records to comply with the Privacy Act.

Sincerely,

Edward Hasbrouck

On 24 Dec 2009 at 11:37, "FOIA" <FOIA <FOIA.tsa@dhs.gov>> wrote:

Subject: YOUR FOIA INQUIRY
Date sent: Thu, 24 Dec 2009 11:37:28 -0500
From: "FOIA" <FOIA.tsa@dhs.gov>
To: <edward@hasbrouck.org>
Copies to: "FOIA" <FOIA.tsa@dhs.gov>

> Good morning Mr. Hasbrouck,
> Attached below is your acknowledgement letter to case number
> TSA10-0179. A hard copy should arrive in the mail by next week. If
> you have any questions or concerns, please feel free to contact us at
> (866) 364 - 2872 or via e-mail at FOIA.TSA@DHS.GOV.

>
> <<10 0179 Acknowledgement Ltr.pdf>>
>

> Thank you,

>
> Transportation Security Administration HQ (TSA) Office of Special
> Counselor (OSC) Freedom of Information Act Office (FOIA)
> Main: 866.364.2872
> Fax: 571.227.1406

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
1130 Treat Ave., San Francisco, CA 94110, USA
+1-415-824-0214

consultant to The Identity Project (IDP), a program of the First Amendment Project
<<http://www.papersplease.org>>

"Congress shall make no law ... abridging ... the right of the people peaceably to assemble"
(U.S. Constitution, Amendment 1)

"Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country."
(Universal Declaration of Human Rights, Article 13)

"Liberty of movement is an indispensable condition for the free development of a person."
(United Nations Human Rights Committee, General Comment No. 27)

(b) (6)

<TSA OCC>

From: Holzerland, William (b) (6)
Sent: Wednesday, December 16, 2009 12:03 PM
To: Janet, Kevin <TSA FOIA>
Subject: Hasbrouck complaint: email auto-reply

KJ,

I just got off the phone with NARA-OGIS. (b) (5)

(b) (5). He says that the auto-reply email he receives when sending them to the agency gives the wrong physical address for TSA. We had no idea whether he's referring to your auto-reply or the one issued from our office, so I thought I would mention it just in case your email inbox has one – and I am having the agent who monitors our FOIA inbox look into whether our auto-reply needs to be updated as well. Also, (b) (5)

(b) (5)

Regards,
Bill

William H. Holzerland, CIPP/G
U.S. Department of Homeland Security
Associate Director,
Disclosure Policy & FOIA Program Development
(b) (6)

(b) (6) <TSA OCC>

From: Bird, Rose M (b) (6)
Sent: Thursday, December 17, 2009 1:55 PM
To: Pietra, Peter; Bird, Rose M
Cc: (b) (6) TSA HQ; (b) (6) Janet, Kevin TSA FOIA
Subject: RE: Complaint from Edward Hasbrouck

Thanks, Peter. There was a long message on my voicemail yesterday and accusations were made. I wanted to follow up on the November 3, 2009 email request he submitted. I am calling (b) (6) now.

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: Pietra, Peter [mailto:Peter.Pietra@dhs.gov]
Sent: Thursday, December 17, 2009 1:48 PM
To: Bird, Rose M
Cc: (b) (6) TSA HQ; (b) (6) Janet, Kevin TSA FOIA
Subject: RE: Complaint from Edward Hasbrouck

Hi Rose- (b) (5) The fact that no one is giving him the precise response he wants doesn't mean that we haven't evaluated it and taken appropriate action (b) (5)

(b) (5) Note that even with an out of date zip code, he's been able to submit FOIAs electronically. He has not contacted my office yet, so I have not intervened. (b) (5)

From: (b) (6) <TSA HQ>
Sent: Thursday, December 17, 2009 1:38 PM
To: Pietra, Peter ; (b) (6)
Subject: FW: Complaint from Edward Hasbrouck

fyi

From: Bird, Rose M [mailto:(b) (6)]
Sent: Thursday, December 17, 2009 1:33 PM
To: (b) (6) TSA HQ
Cc: (b) (6) <CTR>; Bird, Rose M
Subject: FW: Complaint from Edward Hasbrouck

Here is the email I referenced. Bill Holzerland granted permission to me to send to you.

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: Holzerland, William
Sent: Thursday, December 17, 2009 10:03 AM
To: Bird, Rose M
Subject: Complaint from Edward Hasbrouck

Rose,

I spoke with Edward Hasbrouck, a gentleman who has encountered difficulties with issues related to various FOIA requests with several DHS components, yesterday afternoon. Mr. Hasbrouck also rambled about "criminal violations of the Privacy Act" by various DHS employees and multiple components. Hasbrouck also complained that various TSA SORNs are out of date and is aggravated he has brought this to the attention of the Privacy Office, TSA privacy folks, the IG and various other parties and that "we" (the royal "we" – he means everybody) have allegedly taken no action in response to these complaints. He indicated he has complained and complained to the IG to no avail and he also ~~stated~~ he has sent complaint-type correspondence ad nauseam to privacy@dhs.gov without it being acknowledged, no action taken, etc. At any rate, I attempted to help him with the FOIA matters yesterday and he was belligerent and rude to an unacceptable degree when I called him, so be wary of that fact. (b) (5). I am not sure what (if anything) you can do to help him or whether his privacy complaints have merit or not, but I wanted to pass this on for appropriate action.

Regards,
Bill

William H. Holzerland, CIPP/G
U.S. Department of Homeland Security
Associate Director,
Disclosure Policy & FOIA Program Development
(b) (6)

(b) (6) <TSA OCC>

From: Holzerland, William (b) (6)
Sent: Wednesday, December 30, 2009 1:57 PM
To: Bird, Rose M; Pietra, Peter ; Janet, Kevin <TSA FOIA>
Cc: Papoi, Catherine
Subject: Complaint from Edward Hasbrouck dated 12/16/09
Attachments: Hasbrouck.Complaint.12.16.09.pdf; FW: violations of FOIA by TSA; RE: FOIA contact page update

All,

FYI, please see attached complaint from Edward Hasbrouck, dated 12/16/09, received today - again dealing with the issue of TSA's published address. Mr. Hasbrouck also states in the complaint he sent this to OIG via email and regular mail, so I have not copied them on this message. Though he states he also sent it to TSA's privacy office, the TSA mailing address does not appear in the address area of this letter. Mr. Hasbrouck stated this complaint is the same one sent via email to dhsogh hotline@dhs.gov, foia.tsa@dhs.gov, foia@hq.dhs.gov on 11/2/09 (attached) and that the US Postal Service received the complaint as well and referred it to the USPS Office of Inspector General. Furthermore, Mr. Hasbrouck stated he has "repeatedly" reported his complaints to the aforementioned addressees via telephone. Though not included in the most recent complaint, he informed me verbally via phone on 12/17/09 that he has allegedly sent identical complaints to privacy@dhs.gov and they've also gone unacknowledged.

In his complaint, Mr. Hasbrouck requests the OIG and PRIV do several things. Below is a non-exhaustive list of things Hasbrouck wants:

- Investigate his complaint and bring appropriate enforcement action against the responsible DHS and/or TSA officials
- Attempt to determine how many FOIA/PA requests may not have been delivered when TSA's zip code changed
- Publish prominent notices (including press releases, dhs.gov and tsa.gov pages, and Departmental and TSA FOIA/PA webpages) that requests may not have been delivered and advise past requesters to resend their requests
- Reply to confirm receipt of this complaint and advise him of tracking/reference number assigned to it
- Advise him of the outcome of his complaint and provide him with a copy of any report produced in response to it
- Confirm this complaint has been logged "as a complaint of violation of FOIA and the Privacy Act, and will be included in (our) reporting of statistics regarding such complaints"

At any rate, we updated the www.dhs.gov/foia webpage with the correct zip code within minutes of this being brought to our attention on 11/2/09. TSA FOIA also updated their webpage as soon as they learned of this issue. I don't know what else FOIA can do for him. We obviously do not have investigative authority in the FOIA shop here. His principal complaint seems to be that requests may not have been delivered/received in the mail in between the time the zip code changed and the time the webpage was updated. However, all of this stems from his request dated 10/15/09 for the TSA screening SOP. Mr. Hasbrouck has published vivid details about the submission of this request, his request for expedited processing, responses received from TSA in response to his request for expedited processing, etc. here: <http://www.papersplease.org/wp/2009/10/27/tsa-sends-our-foia-request-into-a-black-hole/>. So his principal beef is that DHS/TSA is violating his due process rights because he was not able to get a return receipt from USPS for this request. Yet TSA was able to respond to his initial request, timely respond to his request for expedited processing and timely respond to his appeal of the denial of expedited processing - all regarding this exact request received via e-mail. [REDACTED]

[REDACTED] We've all seen and heard about this same issue from the same requester multiple times, but I am passing on this complaint, as he requests, nonetheless.

Regards,
Bill

William H. Holzerland, CIPP/G
U.S. Department of Homeland Security
Associate Director,
Disclosure Policy & FOIA Program Development

(b) (6)

The Identity Project

www.PapersPlease.org

1736 Franklin Street, 9th Floor
Oakland, CA 94612
510-208-7744 (office)
415-824-0214 (cell/mobile)

December 16, 2009

Privacy Office
Department of Homeland Security
245 Murray Drive, S.W.
Washington, DC 20528

DHS Office of Inspector General/MAIL STOP 2600
Attention: Office of Investigations - Hotline
245 Murray Drive, SW, Building 410
Washington, DC 20528

Complaint of violation of FOIA and criminal violation of the Privacy Act by TSA

The addresses of the TSA FOIA office and the TSA Privacy Act office, and the address for postal submission of FOIA and Privacy Act requests to the TSA, have changed without public notice.

The TSA is not currently accepting delivery of FOIA or, we suspect, Privacy Act requests sent to their officially designated addresses.

To our knowledge, this has been the situation at least since October 16, 2009, and we believe that it continues today.

Because the TSA is not accepting delivery of these requests, it is impossible for requesters to obtain confirmation of receipt of their requests. Without evidence of the date of receipt, it is impossible for requesters to appeal constructive denial of their requests, or to litigate constructive denial of requests or appeals.

TSA and DHS are required by FOIA and the Privacy Act to publicly designate, through notices in the Federal Register, addresses at which FOIA and Privacy Act requests are accepted. Failure to designate such addresses or to accept delivery at those addresses, or instructing the Postal Service not to deliver requests sent to those addresses, are violations of FOIA and/or the Privacy Act on the part of the responsible DHS and/or TSA officials.

The most recent DHS FOIA regulations, as published in the Federal Register (60 FR 4056-4069, January 27, 2003) and codified at 6 CFR Part 5, list the TSA FOIA address as:

Transportation Security Administration
400 Seventh Street, SW.
Washington, DC 20590

We have been told by phone, on a rare occasion when the TSA FOIA or Privacy Act office answered their phone, that that address is obsolete.

The DHS.gov and TSA.gov Web sites have listed a different FOIA request address:

Transportation Security Administration
Freedom of Information Act Office, TSA-20
601 S. 12th Street
11th Floor, East Tower
Arlington, VA 22202-4220

However, we believe that neither of these addresses is correct. The U.S. Postal Service has told me that they were unable to deliver our FOIA request sent by Express Mail to the Arlington address above.

According to the USPS, my Express Mail letter arrived in the Arlington Post Office on October 16, 2009. According to the USPS, the TSA zip code has changed to 20598, and the TSA has instructed the USPS not to deliver mail sent to that address and zip code 22202. Because the TSA has instructed the USPS not to attempt delivery of such mail, the USPS was unable to provide proof of delivery, proof of non-delivery, or proof of refusal to accept delivery, and our letter was not returned to us.

Although this happened to our letter on October 16th, no new TSA or DHS FOIA notice, no new TSA Privacy Act SORN for any system of records, and no update to the TSA or DHS FOIA regulations in 6 CFR Part 5 has yet been published in the Federal Register.

We presume that TSA was aware that their address was to be changed, and that it had been changed, and could have published notices of changes in advance on their Web sites and in the Federal Register. Standard operating procedures for compliance with FOIA and the Privacy Act should have provided for the issuance and publication in the Federal Register of a new FOIA notice, updates to the FOIA regulations in 6 CFR Part 5, and new SORNs, prior to the effective date of the change of address, and special care in instructing the USPS and TSA mailroom staff to ensure that requests continued to be delivered without interruption.

Since that was not done, and until it can be done, the USPS and other carriers should have been directed to continue delivery of requests sent to the officially designated addresses. The DHS and TSA have an affirmative legal duty under FOIA and the Privacy Act to promulgate valid addresses and ensure that they accept delivery of requests sent to those addresses. To direct that requests be sent to an address that, by TSA directive to the Postal Service, has been rendered a "black hole", constitutes *de facto* summary, secret denial of all such requests.

One of our FOIA requests – sent by e-mail and Express Mail on October 15, 2009 – included a request for expedited processing. Under FOIA, the TSA was required to make a decision on that request for expedited processing within 10 days, that is, by October 25, 2009. Although we were eventually told by telephone that our request was received by the TSA FOIA office, we received no written or electronic confirmation until after the deadline for expedited processing of our request.

Under FOIA, we were entitled to commence litigation to challenge the constructive denial of our request for expedited processing 10 days after the receipt of our request. But since the TSA's refusal to accept delivery made it impossible for us to prove when our request was received, it effectively barred the courthouse door, and prevented us from seeking judicial review of their constructive denial, or administrative review (if they had actually responded), until they provided confirmation of when they received our request.

This is an extremely grave due process violation. Until corrected through proper new Federal Register notices and instructions to the USPS and other delivery services, it categorically precludes FOIA and Privacy Act requests and appeals or litigation of constructive denials.

we believe that these actions clearly constitute mismanagement by the DHS and TSA, and violations of FOIA and probably also the Privacy Act.

We request that the Office of the Inspector General and the DHS Privacy and FOIA offices investigate this complaint and bring appropriate enforcement action for sanctions against the responsible DHS and/or TSA officials.

Even if these violations were to be corrected by new notices in the Federal Register tomorrow, the damage of several months during which the TSA refused to accept properly addressed FOIA requests has been done, and I request that you proceed with your investigation of this complaint.

Most requesters, of course, will not even know that their request was not delivered, and may never know why they never receive a response. As part of your investigation, we request that you attempt to determine how many other such requests may not have been delivered. And I urge that the TSA and DHS be required, as part of

their mitigation of their violations of the law, to publish prominent notices -- through their usual press release distribution channels and on the DHS and TSA home pages and FOIA and Privacy Act Web pages -- that requests may not have been delivered, and advising past requesters of the need to re-send their requests.

Our request for expedited processing was made as a news media organization, and we have reported publicly on this incident at:


<http://www.papersplease.org/wp/2009/10/27/tsa-sends-our-foia-request-into-a-black-hole/>

We originally sent this complaint by e-mail on November 2, 2009 to <privacy@dhs.gov>, <DHSOIGHOTLINE@dhs.gov>, <foia.tsa@dhs.gov>, and <foia@hq.dhs.gov>, and have repeatedly attempted to report it by phone to those offices as well as the Postal Service (who referred it to the USPS Office of the Inspector General). We were told that our complaint had been assigned case #CA100394971 by the Postal Service, and DHS OIG report #DHS091104031. But as of today, we have received no written acknowledgment or response.

Please reply to confirm your receipt of this report and complaint, and any tracking or reference number assigned to this complaint and/or to your investigation. Please advise us of the outcome of this complaint and provide us with a copy of any report produced by your office in response to this complaint and your investigation. Please feel free to contact me if you need any additional information from us, or if we can be of any assistance to you in investigating and prosecuting this complaint. Please also confirm that this complaint has been logged as a complaint of violation of FOIA and the Privacy Act, and will be included in your reporting of statistics regarding such complaints.

We are copying this complaint to the OIG and to TSA and DHS privacy offices, with a request that it be logged in OIG, TSA, and DHS complaint statistics, investigated, and acted on as a complaint of violation of FOIA and (criminal) violation of the Privacy Act by TSA and DHS officials.

Sincerely,



Edward Hasbrouck
The Identity Project

(b) (6) <TSA OCC>

From: (b) (6) <TSA OCC>
Sent: Friday, August 27, 2010 10:43 AM
To: Janet, Kevin <TSA FOIA>
Subject: Fw: violations of FOIA by TSA

Kevin. Please below. I thought you worked with mardi on this. Please let me know status

----- Original Message -----

From: Plofker, Howard <TSA OCC>
To: (b) (6) <TSA OCC>; Pietra, Peter
Sent: Fri Aug 27 10:29:20 2010
Subject: FW: violations of FOIA by TSA

FYI. Is anyone working on his complaint?

Howard Plofker
Acting FOIA Officer
Office of Chief Counsel
Transportation Security Administration
(b) (6)@dhs.gov
571-227- (b) (6)
(b) (6) (Mobile)
571-227-1382 (fax)

This communication might contain communications between attorney and client, communications that are part of the agency deliberative process, or attorney-work product, all of which are privileged and not subject to disclosure outside the agency or to the public. Please consult with the Office of Chief Counsel before disclosing any information contained in this email.
FILE: 600.1

-----Original Message-----

From: (b) (6) [mailto:(b) (6)]
Sent: Tuesday, August 17, 2010 10:04 AM
To: (b) (6)
Cc: (b) (6) Plofker, Howard TSA OCC
Subject: RE: violations of FOIA by TSA

(b) (6)

Thank you for the update on Mr. Hasbrouck's complaint.

Sincerely,

(b) (6)

(b) (6)
Staff Assistant
Office of the General Counsel
Department of Homeland Security
(b) (6)

-----Original Message-----

From: (b) (6) [mailto:(b) (6)]
Sent: Tuesday, August 17, 2010 9:57 AM
To: (b) (6)

Subject: RE: violations of FOIA by TSA

Hi (b) (6)

It looks like Mr. Hasbrouck sent a complaint to the OIG Office of Investigations hotline for them to investigate this matter, and did not send this to the FOIA unit. If he called the OIG FOIA unit previously we would have told him that we can't help him with his complaint as the OIG Office of Investigations is separate from our area.

Additionally, it appears his main issue is that TSA never received his FOIA request. If that's the case, (b) (5)

Hope this helps!!

(b) (6)

-----Original Message-----

From: (b) (6) [mailto:(b) (6)]
Sent: Tuesday, August 17, 2010 9:13 AM
To: (b) (6)
Cc: (b) (6)
Subject: FW: violations of FOIA by TSA

(b) (6),

Attached is the email that I mentioned to you over the phone. Please advise.

Regards,

(b) (6)

(b) (6)

Staff Assistant
Office of the General Counsel
Department of Homeland Security
(b) (6)

-----Original Message-----

From: Edward Hasbrouck [mailto:edward@hasbrouck.org]
Sent: Monday, August 16, 2010 4:50 PM
To: (b) (6)
Subject: Re: violations of FOIA by TSA

I haven't heard further from anyone on this since your message last October. Any progress on this? Can you at least tell me the proper office to which to send complaints of the (continuing) FOIA and Privacy Act violations by DHS in not having promulgated FOIA regulations or Privacy act SORNs containing valid current addresses for requests and appeals?

Sincerely,

Edward Hasbrouck

On 3 Nov 2009 at 11:46, "(b) (6)" <(b) (6)> wrote:

Subject: RE: (Fwd) violations of FOIA by TSA
Date sent: Tue, 3 Nov 2009 11:46:54 -0500
From: "(b) (6)" <(b) (6)>
To: "Edward Hasbrouck" <edward@hasbrouck.org>

> Thank you for sending your FOIA documents. I will discuss with my
> supervisor on the appropriate action in assisting you with your
request.

>
>
> Regards,

> (b) (6)

> (b) (6)

> Staff Assistant
> Office of the General Counsel
> Department of Homeland Security
> (b) (6)

> -----Original Message-----

> From: Edward Hasbrouck [mailto:edward@hasbrouck.org]
> Sent: Tuesday, November 03, 2009 11:03 AM
> To: (b) (6)
> Subject: (Fwd) violations of FOIA by TSA

>
> Below is the complaint I have sent to the DHS Office of the Inspector
> General; attached is my original FOIA request, which was sent 15
October

> 2009 by e-mail to FOIA.TSA@dhs.gov and by postal Express Mail.

>
> Time is of the essence. This material requested is needed in time for
> the public to learn about it and use it to formulate input to Congress
for the

> confirmation hearings on the nominee for TSA Administrator, one of
which

> has already been held by the Senate Commerce and Transportation
> Committee, and the second and probably final of which is scheduled by
> the Senate Committee on Homeland Security for 10 November 2009, as we
have

> reported (noting our pending FOIA request) on our Web site at:

>
> [http://www.papersplease.org/wp/2009/11/02/tsa-nominee-up-for-senate-
> questioning-november-10th/](http://www.papersplease.org/wp/2009/11/02/tsa-nominee-up-for-senate-questioning-november-10th/)

> Any assistance you can provide would be appreciated.

> Sincerely,

> Edward Hasbrouck

> ----- Forwarded message follows -----

> From: Edward Hasbrouck <edward@hasbrouck.org>
> To: DHSOIGHOTLINE@dhs.gov
> Subject: violations of FOIA by TSA
> Copies to: foia.tsa@dhs.gov, foia@hq.dhs.gov,

> privacy@dhs.gov, TellTSA@dhs.gov,
 > TSA-ContactCenter@dhs.gov, ogis@nara.gov
 > Date sent: Mon, 02 Nov 2009 10:41:10 -0800
 >
 > The address of the TSA FOIA office (and, I suspect, the TSA Privacy
 Act
 > office), and the address for postal submission of FOIA requests to the
 TSA,
 > have changed without public notice.
 >
 > The TSA is not currently accepting delivery of FOIA (or, I suspect),
 > Privacy Act) requests sent to their officially designated address.
 >
 > To my knowledge, this has been the situation at least since October
 16,
 > 2009, more than two full weeks ago, and it continues today.
 >
 > Because the TSA is not accepting delivery of these requests, it is
 > impossible for requesters to obtain confirmation of receipt of their
 > requests. Without evidence of the date of receipt, it is impossible
 for
 > requesters to appeal constructive denial of their requests, or to
 litigate
 > constructive denial of requests for expedited processing.
 >
 > TSA and DHS are required by FOIA and the Privacy Act to publicly
 > designate, through notices in the Federal Register, addresses at which
 FOIA
 > and Privacy Act requests are accepted. Failure to designate such
 addresses
 > or to accept delivery at those addresses, or instructing the Postal
 Service
 > not to deliver requests sent to those addresses, are violations of
 FOIA
 > and/or the Privacy Act on the part of the responsible
 >
 > DHS and/or TSA officials.
 >
 > The most recent DHS FOIA regulations, as published in the Federal
 > Register
 > (60 FR 4056-4069, January 27, 2003) and codified at 6 CFR Part 5,
 list the
 > TSA FOIA address as:
 >
 > Transportation Security Administration
 > 400 Seventh Street, SW.
 > Washington, DC 20590
 >
 > I have been told by phone, on a rare occasion when the TSA FOIA or
 > Privacy Act office answered their phone, that that address is
 obsolete.
 >
 > The DHS.gov and TSA.gov Web sites list a different address:
 >
 > Transportation Security Administration
 > Freedom of Information Act Office, TSA-20
 > 601 S. 12th Street

> 11th Floor, East Tower
 > Arlington, VA 22202-4220
 >
 > However, I believe that neither of these addresses is correct. The U.S.
 > Postal Service has told me that they were unable to deliver my FOIA request
 > sent by Express Mail to the Arlington address above.
 >
 > According to the USPS, my Express Mail letter arrived in the Arlington Post Office on October 16, 2009. According to the USPS, the TSA zip code has
 > changed to 20598, and the TSA has instructed the USPS not to deliver
 >
 > mail sent to that address and zip code 22202. Because the TSA has instructed the USPS not to attempt delivery of such mail, the USPS was
 > unable to provide proof of delivery, proof of non-delivery, or proof of
 > refusal to accept delivery, and my letter was not returned to me.
 >
 > Although this happened to my letter on October 16th, more than two full
 > weeks ago, no new TSA or DHS FOIA notice, no new TSA Privacy Act SORN for
 > any system of records, and no update to the TSA or DHS FOIA regulations in
 > 6 CFR Part 5 has yet been published in the Federal Register.
 >
 > I presume that TSA was aware that their address was to be changed, and that
 > it had been changed, and could have published notices of changes in advance on their Web sites and in the Federal Register. Standard
 > operating procedures for compliance with FOIA and the Privacy Act should
 >
 > have provided for the issuance and publication in the Federal Register of a
 > new FOIA notice, updates to the FOIA regulations in 6 CFR Part 5, and new
 > SORNs, *prior* to the effective date of the change of address, and special
 > care in instructing the USPS and TSA mailroom staff to ensure that requests
 > continued to be delivered without interruption.
 >
 > Since that was not done, and until it can be done, the USPS and other
 > carriers should have been directed to continue delivery of requests sent
 >
 > to the officially designated addresses. The DHS and TSA have an affirmative legal duty under FOIA and the Privacy Act to promulgate
 > valid addresses and ensure that they accept delivery of requests sent to those
 >
 > addresses. To direct that requests be sent to an address that, by TSA directive to the Postal Service, has been rendered a "black hole",

> constitutes de facto summary, secret denial of all such requests.
>
> My FOIA request -- sent by e-mail and Express Mail on October 15, 2009
--
> included a request for expedited processing. Under FOIA, the TSA was
> required to make a a decision on that request for expedited processing
> within 10 days, that is, by October 25, 2009. Although I was
eventually
> told by telephone that my request was received by the TSA FOIA office,
and
> I have been promised postal and e-mail confirmation of receipt by the
TSA
> FOIA office, I have yet to receive any written or electronic
confirmation.
>
> Under FOIA, I was entitled to commence litigation to challenge the
> constructive denial of my request for expedited processing 10 days
after
>
> the receipt of my request. But since the TSA's refusal to accept
> delivery
> has made it impossible for me to prove when my request was received,
it
> effectively bars the courthouse door, and prevents me from seeking
judicial
> review of their constructive denial, or administrative review (if they
had
> actually responded), until they provide confirmation of when they
received
> my request.
>
> This is an extremely grave due process violation. Until corrected
> through
> proper new federal register notices and instructions to the USPS and
> other
> delivery services, it categorically precludes FOIA and perhaps also
> Privacy Act requests and appeals or litigation of constructive
denials.
>
>
> Instead of having been able to commence litigation October 25th (if
they
> confirmed receipt of my e-mail on October 15th) or October 26th (if
they
> signed for my Express Mail letter on October 16th), I am still waiting
for
> written confirmation of receipt of my request.
>
> I believe that these actions clearly constitute mismanagement by the
DHS
> and TSA, and violations of FOIA and probably also the Privacy Act.
>
> I request that the Office of the Inspector General investigate this
> complaint and bring appropriate enforcement action for sanctions
against
> the responsible DHS and/or TSA officials.
>

> Even if these violations were to be corrected by new notices in the
 > Federal Register tomorrow, the damage of several weeks during which
 the TSA
 > refused to accept properly addressed FOIA requests has been done, and
 I
 > request that you proceed with your investigation of this complaint.
 >
 > Most requesters, of course, will not even know that their request was
 > not
 > delivered, and may never know why they never receive a response. As
 > part
 > of your investigation, I request that you attempt to determine how
 many
 > other such requests may not have been delivered. And I urge that the
 TSA
 > and DHS be required, as part of their mitigation of their violations
 of the
 > law, to publish prominent notices -- through their usual press release
 > distribution channels and on the DHS and TSA home pages and FOIA and
 > Privacy Act Web pages -- that requests may not have been delivered,
 and
 >
 > advising past requesters of the need to re-send their requests.
 >
 > My request for expedited processing was made as a journalist, and I
 have
 > reported publicly on this incident at:
 >
 >
[http://www.papersplease.org/wp/2009/10/27/tsa-sends-our-foia-request-int
 o-
 a-black-hole/](http://www.papersplease.org/wp/2009/10/27/tsa-sends-our-foia-request-int-o-a-black-hole/)
 >
 > Please reply to confirm your receipt of this report and complaint, and
 any
 > tracking or reference number assigned to this complaint and/or to your
 > investigation. Please advise me of the outcome of this complaint and
 > provide me with a copy of any report produced by your office in
 response
 >
 > to this complaint and your investigation. Please feel free to contact
 me
 >
 > if you need any additional information from me, or if I can be of any
 > assistance to you in investigating and prosecuting this complaint.
 >
 > I am also copying this complaint to the TSA and DHS privacy offices,
 > with
 > a request that it be logged in TSA and DHS complaint statistics,
 > investigated, and acted on as a complaint of violation of FOIA and
 > potentially the Privacy Act by TSA and DHS officials.
 > Sincerely,
 >
 > Edward Hasbrouck
 > 1130 Treat Ave.
 > San Francisco, CA 94110
 > telephone 415-824-0214

>
>
> ----- End of forwarded message -----

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
1130 Treat Ave., San Francisco, CA 94110, USA
+1-415-824-0214

consultant to The Identity Project (IDP),
a program of the First Amendment Project
<<http://www.papersplease.org>>

"Congress shall make no law ... abridging ... the right of the
people peaceably to assemble" (U.S. Constitution, Amendment 1)

"Everyone has the right to freedom of movement and residence
within the borders of each state. Everyone has the right to leave
any country, including his own, and to return to his country."
(Universal Declaration of Human Rights, Article 13)

"Liberty of movement is an indispensable
condition for the free development of a person."
(United Nations Human Rights Committee,
General Comment No. 27)

(b) (6)(b) (6)

From: Janet, Kevin <TSA FOIA> [Kevin.Janet@dhs.gov]
Sent: Monday, November 02, 2009 4:00 PM
To: (b) (6)
Cc: (b) (6)(b) (6)(b) (6) (b) (6)(b) (6)(b) (6) (b) (6) Holzerland, William
Subject: OIG complaint re TSA mailing address

(b) (6) to follow up on my voice message, a TSA broadcast dated 12/17/2008 states that mail will continue to be delivered using the old zip code (22202), that mail would be picked up at the legacy Postal Centers and delivered to the DHS Consolidated Remote Delivery Site, be inspected and make its way to TSA offices. Has TSA directed the Postal Service not to accept mail using the old zipcodes? Here is the gist of one such complaint that has made its way to the IG's office (an email from Edward Hasbrouck, dated 11/2/09):

Transportation Security Administration
Freedom of Information Act Office, TSA-20
601 S. 12th Street
11th Floor, East Tower
Arlington, VA 22202-4220

However, I believe that neither of these addresses is correct. The U.S. Postal Service has told me that they were unable to deliver my FOIA request sent by Express Mail to the Arlington address above. According to the USPS, my Express Mail letter arrived in the Arlington Post Office on October 16, 2009. According to the USPS, the TSA zip code has changed to 20598, and the TSA has instructed the USPS not to deliver mail sent to that address and zip code 22202. Because the TSA has instructed the USPS not to attempt delivery of such mail, the USPS was unable to provide proof of delivery, proof of non-delivery, or proof of refusal to accept delivery, and my letter was not returned to me.

Kevin J. Janet
Freedom of Information Act Officer
Office of Special Counselor
Transportation Security Administration

(b) (6)(b) (6)

From: (b) (6)(b) (6) <TSA HQ>(b) (6)(b) (6)@dhs.gov]
Sent: Tuesday, November 03, 2009 9:07 AM
To: Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M; Janet, Kevin TSA FOIA
Subject: RE: violations of FOIA by TSA

Rose,

Quick question. Have you ever heard of Edward Hasbrouck. He is a well-known Privacy Advocate (b) (5)
(b) (5) Ask (b) (6) about him.

<http://www.hasbrouck.org/>

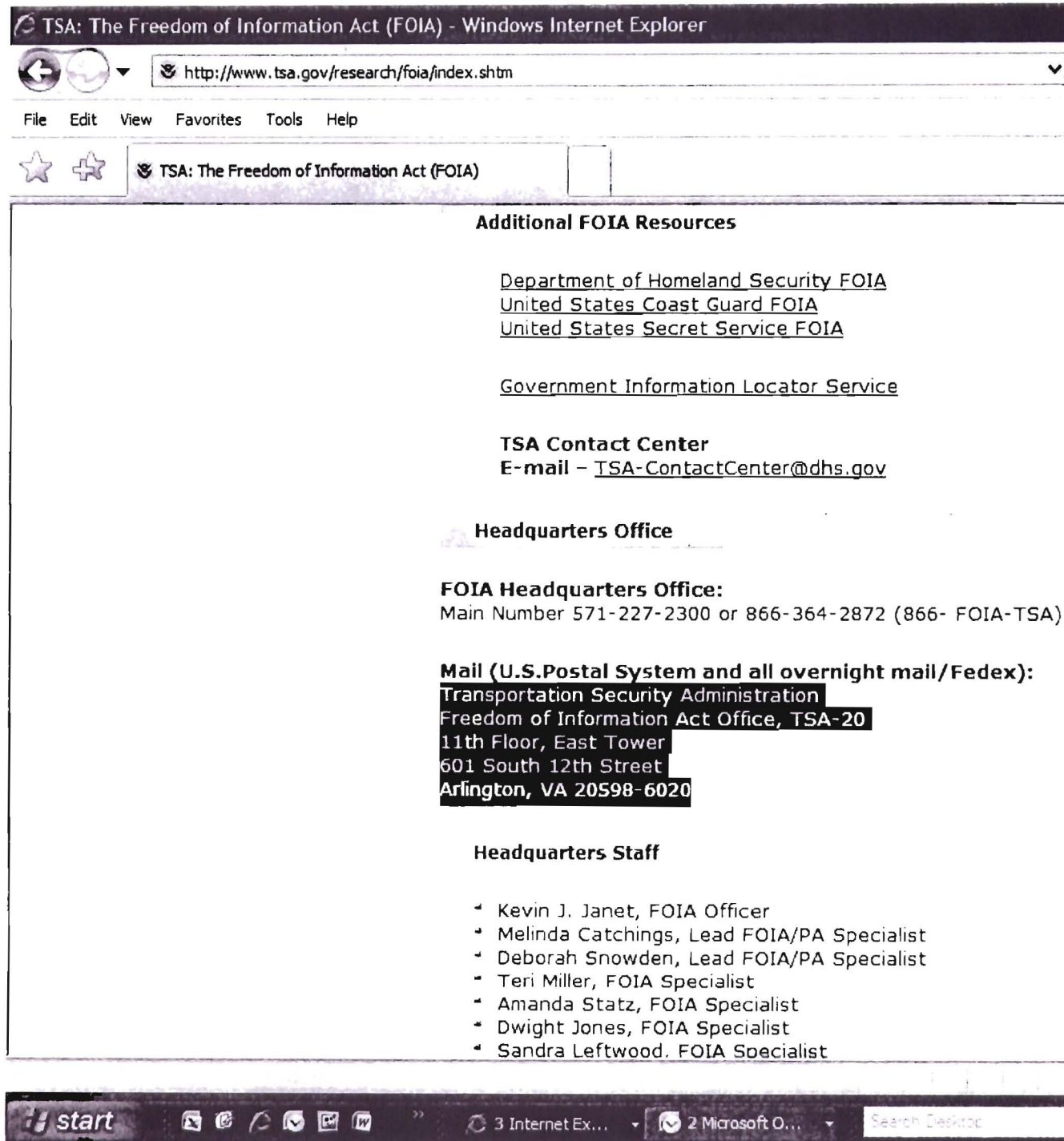
(b) (5)

Back to the question at hand. I know that the Postal Service changed our Zip Code about a year ago to 20598-xxxx (x = the office code). This zip is similar to many government organization around the city. I'm not sure but it may be a way for them to get the items scanned for Anthrax before they actually arrive an agency.

FOIAs address is:

Transportation Security Administration
Freedom of Information Act Office, TSA-20
11th Floor, East Tower
601 South 12th Street
Arlington, VA 20598-6020

The Internet says the same thing:



v/r

(b) (6)

-----Original Message-----

From: Bird, Rose M [mailto:(b) (6)(b) (6)(b) (6)]

Sent: Monday, November 02, 2009 3:39 PM

To: (b) (6)(b) (6) TSA HQ

Cc: (b) (6) <CTR>; Bird, Rose M

Subject: FW: violations of FOIA by TSA

Importance: High

(b) (6)(b) (6)

From: (b) (6)(b) (6) <TSA HQ> (b) (6)(b) (6) @dhs.gov]
Sent: Tuesday, November 03, 2009 10:08 AM
To: (b) (6)(b) (6) TSA HQ; Bird, Rose M
Cc: O'Brien, David <CTR>; Bird, Rose M
Subject: RE: violations of FOIA by TSA

Rose,

I double-checked with the FOIA Office and it seems that they had to update their address on the website recently to match the new zip. They are also checking into whether or not the Postal Service is not forwarding mail sent to the old zip.

From: (b) (6)(b) (6) <TSA HQ>
Sent: Tuesday, November 03, 2009 9:07 AM
To: Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M; Janet, Kevin <TSA FOIA>
Subject: RE: violations of FOIA by TSA

Rose,

Quick question. Have you ever heard of Edward Hasbrouck. He is a well-known Privacy Advocate (b) (5)
(b) (5) Ask (b) (6) about him.

<http://www.hasbrouck.org/>

(b) (5)

Back to the question at hand. I know that the Postal Service changed our Zip Code about a year ago to 20598-xxxx (x = the office code). This zip is similar to many government organization around the city. I'm not sure but it may be a way for them to get the items scanned for Anthrax before they actually arrive an agency.

FOIAs address is:

Transportation Security Administration
Freedom of Information Act Office, TSA-20
11th Floor, East Tower
601 South 12th Street
Arlington, VA 20598-6020

The Internet says the same thing:

(b) (6)(b) (6)

From: (b) (6)(b) (6) <TSA HQ> (b) (6) @dhs.gov]
Sent: Tuesday, November 03, 2009 10:14 AM
To: Bird, Rose M
Subject: RE: violations of FOIA by TSA

Will do.

(b) (6)

From: Bird, Rose M [mailto:(b) (6)]
Sent: Tuesday, November 03, 2009 10:10 AM
To: (b) (6)(b) (6) TSA HQ
Subject: RE: violations of FOIA by TSA

Thanks, (b) (6), (b) (5)
Will you record it for stats purposes as no action as it is a complaint about a website?

Bill indicated just now that he had spoken to Peter Pietra maybe yesterday.

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: (b) (6)(b) (6) <TSA HQ> [mailto:(b) (6)(b) (6) @dhs.gov]
Sent: Tuesday, November 03, 2009 10:08 AM
To: (b) (6)(b) (6) TSA HQ; Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M
Subject: RE: violations of FOIA by TSA

Rose,

I double-checked with the FOIA Office and it seems that they had to update their address on the website recently to match the new zip. They are also checking into whether or not the Postal Service is not forwarding mail sent to the old zip.

From: (b) (6)(b) (6) <TSA HQ>
Sent: Tuesday, November 03, 2009 9:07 AM
To: Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M; Janet, Kevin <TSA FOIA>
Subject: RE: violations of FOIA by TSA

Rose,

Quick question. Have you ever heard of Edward Hasbrouck. He is a well-known Privacy Advocate (b) (5)
(b) (5) Ask (b) (6) about him.

<http://www.hasbrouck.org/>

(b) (5)

Back to the question at hand. I know that the Postal Service changed our Zip Code about a year ago to 20598-xxxx (x = the office code). This zip is similar to many government organization around the city. I'm not sure but it may be a way for them to get the items scanned for Anthrax before they actually arrive an agency.

FOIAs address is:

Transportation Security Administration
Freedom of Information Act Office, TSA-20
11th Floor, East Tower
601 South 12th Street
Arlington, VA 20598-6020

The Internet says the same thing:

(b) (6)(b) (6)

From: Holzerland, William
Sent: Wednesday, November 04, 2009 10:58 AM
To: FOIA
Subject: RE: violations of FOIA by TSA

Thank you!

-----Original Message-----

From: FOIA
Sent: Wednesday, November 04, 2009 10:47 AM
To: Holzerland, William
Subject: FW: violations of FOIA by TSA

Bill - FYI

Regards,

Emily Lantz
FOIA Specialist
McNeil Technologies, Inc.
Supporting the Privacy Office
U.S. Department of Homeland Security
P: (b) (6)
F: 703-235-0443
(b) (6)

-----Original Message-----

From: Pietra, Peter [mailto:Peter.Pietra@dhs.gov]
Sent: Monday, November 02, 2009 3:17 PM
To: FOIA; Janet, Kevin TSA FOIA
Subject: RE: violations of FOIA by TSA

(b) (5) Our public website has the correct zip code on it (20598).

-----Original Message-----

From: FOIA [mailto:FOIA@DHS.GOV]
Sent: Monday, November 02, 2009 2:45 PM
To: Janet, Kevin TSA FOIA; Pietra, Peter
Subject: FW: violations of FOIA by TSA

Mr. Janet - Please see the below.

Regards,

Emily Lantz
FOIA Specialist
McNeil Technologies, Inc.
Supporting the Privacy Office
U.S. Department of Homeland Security
P: (b) (6)
F: 703-235-0443
(b) (6)

-----Original Message-----

From: Edward Hasbrouck [mailto:edward@hasbrouck.org]

(b) (6)(b) (6)(b) (6)

From: Janet, Kevin <TSA FOIA> [Kevin.Janet@dhs.gov]
Sent: Tuesday, December 15, 2009 2:53 PM
To: Pietra, Peter; Holzerland, William; Janet, Kevin TSA FOIA; KAY, ELISSA G; SUZUKI, SHARI
Cc: Leckey, Eric
Subject: RE: Complaint from Requestor - Edward Hasbrouck

I asked Bill to give me a call, but we do not have an outstanding 2007 request from him or his group, The Identity Project. OCC is reviewing our response to TSA10-0052 for the Screening Management SOP. In addition, we received a FOIA request dated 12/9/09 on the same date and sent an ack letter on 12/10, I am forwarding an electronic copy to him as it went out snail mail. I just spoke to requester and everyone is on same page, until the next OIG complaint is filed.

From: Pietra, Peter [mailto:Peter.Pietra@dhs.gov]
Sent: Tuesday, December 15, 2009 2:31 PM
To: Holzerland, William; Janet, Kevin TSA FOIA; KAY, ELISSA G; SUZUKI, SHARI
Cc: Leckey, Eric
Subject: RE: Complaint from Requestor - Edward Hasbrouck

Hasbrouck is a lunatic who throws around "criminal violations" with no rational basis. I can't comment on his claimed 2007 request, but while the zip code was out of date in the 2003 DHS Federal Register notice for 6 CFR part 5, he's clearly been able to get FOIAs to us electronically and has corresponded with me over the years via e-mail. The addresses are correct on our website. The update to the FR is part of the update your office is doing to 6 CFR part 5, and is also in our updates to various SORNs that are working their way through our offices (and have been since Jan 2008).

From: Holzerland, William [mailto:(b) (6)]
Sent: Tuesday, December 15, 2009 2:25 PM
To: Janet, Kevin TSA FOIA; KAY, ELISSA G; SUZUKI, SHARI
Cc: Pietra, Peter; Leckey, Eric
Subject: Fw: Complaint from Requestor - Edward Hasbrouck

Kevin, pls see below re: an outstanding request to TSA from Mr. Hasbrouck from 2007. Elissa and Shari, pls see below w/r/t an initial request, a related partial response, a new request and several related appeals from the same requester. Pete and Eric, copying you as an 'FYI' since Mr. Hasbrouck mentioned having issues with SORNs being out of date. CBP and TSA foia colleagues, can you provide me with status info on all of Mr. Hasbrouck's outstanding issues? Thx, B

William H. Holzerland, CIPP/G
U.S. Department of Homeland Security
Associate Director,
Disclosure Policy & FOIA Program Development
(b) (6)

From: (b) (6) <CTR>
To: Holzerland, William
Cc: Lockett, Vania
Sent: Tue Dec 15 12:20:28 2009
Subject: Complaint from Requestor - Edward Hasbrouck

Edward Hasbrouck called and advised he has submitted two requests, one to CBP and the second to TSA in 2007. He has never received an acknowledgement from TSA but did received one from CBP. To date he has not received information from either component. Please see details below:

CBP

- He received a partial response to PA request on 9/18/2007 and the tracking number is 2007-F4114.
- He sent request certified mail and request was receipted on 9/18/2007
- Contacted CBP and was advised his request was lost. He resubmitted request by e-mail and filed an appeal.
- He filed a new PA request dated 10/15/2009 sent express mail and receipted by CBP on 10/19/2009
- He has submitted two appeals of constructive denial sent to CBP on 12/11/2009 express mail

TSA

- Request was resubmitted by e-mail and TSA has never responded to phone calls nor e-mail
- The wrong phone number is published
- SORNS are missing for various systems and are not published with new address
- Zip code is incorrect

He would like to file a law suit but advised he really does not want to spend the money but would be reimburse since we are not in compliance with the act. He is seeking guidance from our office to have his request processed by the components.

Bill, I believe this is the same individual who called approximately a month ago and complained about an incorrect address (zip code) and phone number which you had TSA to correct.

He can be reached at 415-824-0214.

(b) (6)(b) (6)

From: Janet, Kevin <TSA FOIA> [Kevin.Janet@dhs.gov]
Sent: Wednesday, December 16, 2009 10:01 AM
To: Holzerland, William
Subject: FW: TSA10-0134

fyi

-----Original Message-----

From: Edward Hasbrouck [mailto:edward@hasbrouck.org]
Sent: Tuesday, December 15, 2009 5:53 PM
To: Janet, Kevin <TSA FOIA>
Subject: Re: TSA10-0134

On 15 Dec 2009 at 14:57, "Janet, Kevin TSA FOIA" <Janet, Kevin TSA FOIA <Kevin.Janet@dhs.gov>> wrote:

> Per our conversation. Thank you.

Thnaks very much. Since it wasn't mentioned in your letter, could you please also confirm receipt of our complaints, which were included with

our FOIA request, of (1) violation of FOIA and (2) probable criminal violation of the Privacy Act by TSA employees, advise me of the person or office to whom they have been referred for investigation and enforcement

(including criminal investigation and enforcement) and corrective action, and confirm that these complaints will be included in TSA and DHS reporting of complaints of both FOIA violations and (criminal) Privacy Act violations by the TSA.

Sincerely,

Edward Hasbrouck

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
1130 Treat Ave., San Francisco, CA 94110, USA
+1-415-824-0214

consultant to The Identity Project (IDP), a program of the First Amendment Project <<http://www.papersplease.org>>

"Congress shall make no law ... abridging ... the right of the people peaceably to assemble" (U.S. Constitution, Amendment 1)

"Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country."
(Universal Declaration of Human Rights, Article 13)

"Liberty of movement is an indispensable condition for the free development of a person."
(United Nations Human Rights Committee, General Comment No. 27)

(b) (6)(b) (6)

From: Bird, Rose M
Sent: Thursday, December 17, 2009 12:29 PM
To: Holzerland, William
Subject: FW: Complaint - Edward Hasbrouck

Bill (b) (6) and I are reading the emails you sent but take a look at my note below. I

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: (b) (6)(b) (6) <TSA HQ> [mailto:(b) (6)(b) (6)@dhs.gov]
Sent: Tuesday, November 03, 2009 10:14 AM
To: Bird, Rose M
Subject: RE: violations of FOIA by TSA

Will do.

(b) (6)

From: Bird, Rose M (b) (6)
Sent: Tuesday, November 03, 2009 10:10 AM
To: (b) (6)(b) (6) TSA HQ
Subject: RE: violations of FOIA by TSA

Thanks, (b) (6). (b) (5)
Will you record it for stats purposes as no action as it is a complaint about a website?

Bill indicated just now that he had spoken to Peter Pietra maybe yesterday.

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: (b) (6)(b) (6) <TSA HQ> [mailto:(b) (6)(b) (6)@dhs.gov]
Sent: Tuesday, November 03, 2009 10:08 AM
To: (b) (6)(b) (6) TSA HQ; Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M
Subject: RE: violations of FOIA by TSA

Rose,

I double-checked with the FOIA Office and it seems that they had to update their address on the website recently to match the new zip. They are also checking into whether or not the Postal Service is not forwarding mail sent to the old zip.

(b) (6)(b) (6)

From: Bird, Rose M
Sent: Thursday, December 17, 2009 12:35 PM
To: (b) (6)(b) (6) TSA HQ
Subject: Complaint - Edward Hasbrouck

(b) (6), I had a voicemail message from Edward Hasbrouck yesterday inquiring about the status of his November 3, 2009 complaint. I see my note below and based on that I never logged in our system nor corresponded with the individual.

Did you log in and correspond with him?

I have since received an email from Bill Holzerland in my office which contains 5 email attachments. Perhaps we can discuss? I will be back at my desk at 1:20 pm. Or perhaps next week?

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: (b) (6)(b) (6) <TSA HQ> [mailto:(b) (6)(b) (6)@dhs.gov]
Sent: Tuesday, November 03, 2009 10:14 AM
To: Bird, Rose M
Subject: RE: violations of FOIA by TSA

Will do.

(b) (6)

From: Bird, Rose M [mailto:(b) (6)]
Sent: Tuesday, November 03, 2009 10:10 AM
To: (b) (6)(b) (6) TSA HQ
Subject: RE: violations of FOIA by TSA

Thanks, (b) (6) (b) (5)
Will you record it for stats purposes as no action as it is a complaint about a website?

Bill indicated just now that he had spoken to Peter Pietra maybe yesterday.

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: (b) (6)(b) (6) <TSA HQ> [mailto:(b) (6)(b) (6)@dhs.gov]
Sent: Tuesday, November 03, 2009 10:08 AM
To: (b) (6)(b) (6) TSA HQ; Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M
Subject: RE: violations of FOIA by TSA

Rose,

I double-checked with the FOIA Office and it seems that they had to update their address on the website recently to match the new zip. They are also checking into whether or not the Postal Service is not forwarding mail sent to the old zip.

From: (b) (6)(b) (6) <TSA HQ>
Sent: Tuesday, November 03, 2009 9:07 AM
To: Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M; Janet, Kevin <TSA FOIA>
Subject: RE: violations of FOIA by TSA

Rose,

Quick question. Have you ever heard of Edward Hasbrouck. He is a well-known Privacy Advocate (b) (5) (b) (5) Ask (b) (6) about him.

<http://www.hasbrouck.org/>

(b) (5)

Back to the question at hand. I know that the Postal Service changed our Zip Code about a year ago to 20598-xxxx (x = the office code). This zip is similar to many government organization around the city. I'm not sure but it may be a way for them to get the items scanned for Anthrax before they actually arrive an agency.

FOIAs address is:

Transportation Security Administration
Freedom of Information Act Office, TSA-20
11th Floor, East Tower
601 South 12th Street
Arlington, VA 20598-6020

The Internet says the same thing:

(b) (6)(b) (6)

From: (b) (6)(b) (6) <TSA HQ>(b) (6)(b) (6)@dhs.gov]
Sent: Thursday, December 17, 2009 12:40 PM
To: Bird, Rose M
Subject: RE: Complaint - Edward Hasbrouck

I have not. He has a number of issues ongoing over here. He has some items going through Executive Secretariat as well. I can't help or close out anything on Hasbrouck. He also had letters submitted to Peter's supervisor, Kim Walton and I think she responded as well.

Send us what you have on Holzerland. Not sure what this is about.

Thanks.

From: Bird, Rose M [mailto:(b) (6)]
Sent: Thursday, December 17, 2009 12:35 PM
To: (b) (6)(b) (6) TSA HQ
Subject: Complaint - Edward Hasbrouck

(b) (6), I had a voicemail message from Edward Hasbrouck yesterday inquiring about the status of his November 3, 2009 complaint. I see my note below and based on that I never logged in our system nor corresponded with the individual.

Did you log in and correspond with him?

I have since received an email from Bill Holzerland in my office which contains 5 email attachments. Perhaps we can discuss? I will be back at my desk at 1:20 pm. Or perhaps next week?

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: (b) (6)(b) (6) <TSA HQ> [mailto:(b) (6)(b) (6)@dhs.gov]
Sent: Tuesday, November 03, 2009 10:14 AM
To: Bird, Rose M
Subject: RE: violations of FOIA by TSA

Will do.

(b) (6)

From: Bird, Rose M [mailto:(b) (6)]
Sent: Tuesday, November 03, 2009 10:10 AM
To: (b) (6)(b) (6) TSA HQ
Subject: RE: violations of FOIA by TSA

Thanks, (b) (6). (b) (5)

Will you record it for stats purposes as no action as it is a complaint about a website?

Bill indicated just now that he had spoken to Peter Pietra maybe yesterday.

Rose Bird

Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (703) 235-0758
Fax: (703) 235-0442
Email: (b) (6)

From: (b) (6)(b) (6) <TSA HQ> [mailto:(b) (6)(b) (6)@dhs.gov]
Sent: Tuesday, November 03, 2009 10:08 AM
To: (b) (6)(b) (6) TSA HQ; Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M
Subject: RE: violations of FOIA by TSA

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Cc: (b) (6) <CTR>; Bird, Rose M; Janet, Kevin <TSA FOIA>
Subject: RE: violations of FOIA by TSA

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(b) (5) Ask (b) (6) about him.

<http://www.hasbrouck.org/>

(b) (5)

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FOIAs address is:

Transportation Security Administration
Freedom of Information Act Office, TSA-20
11th Floor, East Tower
601 South 12th Street
Arlington, VA 20598-6020

The Internet says the same thing:

(b) (6)(b) (6)

From: (b) (6)(b) (6) <TSA HQ> (b) (6)(b) (6) @dhs.gov]
Sent: Thursday, December 17, 2009 1:38 PM
To: Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M
Subject: RE: Complaint from Edward Hasbrouck

Thanks Rose.

From: Bird, Rose M [mailto:(b) (6)]
Sent: Thursday, December 17, 2009 1:33 PM
To: (b) (6)(b) (6) TSA HQ
Cc: (b) (6) <CTR>; Bird, Rose M
Subject: FW: Complaint from Edward Hasbrouck

Here is the email I referenced. Bill Holzerland granted permission to me to send to you.

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: Holzerland, William
Sent: Thursday, December 17, 2009 10:03 AM
To: Bird, Rose M
Subject: Complaint from Edward Hasbrouck

Rose,

I spoke with Edward Hasbrouck, a gentleman who has encountered difficulties with issues related to various FOIA requests with several DHS components, yesterday afternoon. Mr. Hasbrouck also rambled about "criminal violations of the Privacy Act" by various DHS employees and multiple components. Hasbrouck also complained that various TSA SORNs are out of date and is aggravated he has brought this to the attention of the Privacy Office, TSA privacy folks, the IG and various other parties and that "we" (the royal "we" – he means everybody) have allegedly taken no action in response to these complaints. He indicated he has complained and complained to the IG to no avail and he also stated he has sent complaint-type correspondence ad nauseam to privacy@dhs.gov without it being acknowledged, no action taken, etc. At any rate, I attempted to help him with the FOIA matters yesterday and he was belligerent and rude to an unacceptable degree when I called him, so be wary of that fact. (b) (5) I am not sure what (if anything) you can do to help him or whether his privacy complaints have merit or not, but I wanted to pass this on for appropriate action.

Regards,
Bill

William H. Holzerland, CIPP/G
U.S. Department of Homeland Security
Associate Director,
Disclosure Policy & FOIA Program Development
(b) (6)

(b) (6)

From: Bird, Rose M
Sent: Thursday, December 17, 2009 1:40 PM
To: (b) (6)(b) (6) TSA HQ
Subject: RE: Complaint from Edward Hasbrouck

Can I call you now?

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: (b) (6)(b) (6) <TSA HQ> [mailto:(b) (6)(b) (6)@dhs.gov]
Sent: Thursday, December 17, 2009 1:38 PM
To: Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M
Subject: RE: Complaint from Edward Hasbrouck

Thanks Rose.

From: Bird, Rose M [mailto:(b) (6)]
Sent: Thursday, December 17, 2009 1:33 PM
To: (b) (6)(b) (6) TSA HQ
Cc: O'Brien, David <CTR>; Bird, Rose M
Subject: FW: Complaint from Edward Hasbrouck

Here is the email I referenced. Bill Holzerland granted permission to me to send to you.

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (703) 235-0758
Fax: (703) 235-0442
Email: (b) (6)

From: Holzerland, William
Sent: Thursday, December 17, 2009 10:03 AM
To: Bird, Rose M
Subject: Complaint from Edward Hasbrouck

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I spoke with Edward Hasbrouck, a gentleman who has encountered difficulties with issues related to various FOIA requests with several DHS components, yesterday afternoon. Mr. Hasbrouck also rambled about "criminal violations of the Privacy Act" by various DHS employees and multiple components. Hasbrouck also complained that various TSA SORNs are out of date and is aggravated he has brought this to the attention of the Privacy Office, TSA privacy folks, the IG and various other parties and that "we" (the royal "we" – he means everybody) have allegedly taken no action in response to these complaints. He indicated he has complained and complained to the IG to no avail and he also stated he has sent complaint-type correspondence ad nauseam to privacy@dhs.gov without it being acknowledged, no action taken, etc. At any rate, I attempted to help him with the FOIA matters yesterday and he was belligerent and rude to an unacceptable degree when I called him, so be wary of that fact. (b) (5) I am not sure what (if

(b) (6)(b) (6)

From: (b) (6)(b) (6) <TSA HQ> (b) (6)(b) (6) @dhs.gov]
Sent: Thursday, December 17, 2009 1:56 PM
To: Bird, Rose M
Subject: RE: Complaint from Edward Hasbrouck

Sure. (b) (5)

. I'm listening to his speech now and he describes himself as "the troublemaker."

From: Bird, Rose M [mailto:(b) (6)]
Sent: Thursday, December 17, 2009 1:40 PM
To: (b) (6)(b) (6) TSA HQ
Subject: RE: Complaint from Edward Hasbrouck

Can I call you now?

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: (b) (6)(b) (6) <TSA HQ> [mailto:(b) (6)(b) (6) @dhs.gov]
Sent: Thursday, December 17, 2009 1:38 PM
To: Bird, Rose M
Cc: (b) (6) <CTR>; Bird, Rose M
Subject: RE: Complaint from Edward Hasbrouck

Thanks Rose.

From: Bird, Rose M [mailto:(b) (6)]
Sent: Thursday, December 17, 2009 1:33 PM
To: (b) (6)(b) (6) TSA HQ
Cc: (b) (6) <CTR>; Bird, Rose M
Subject: FW: Complaint from Edward Hasbrouck

Here is the email I referenced. Bill Holzerland granted permission to me to send to you.

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: Holzerland, William
Sent: Thursday, December 17, 2009 10:03 AM
To: Bird, Rose M
Subject: Complaint from Edward Hasbrouck

Rose,

(b) (6)(b) (6)

From: Bird, Rose M
Sent: Thursday, December 17, 2009 2:29 PM
To: Pietra, Peter
Subject: RE: Complaint - Edward Hasbrouck

Ok great. (b) (5)

Put on your Privacy Man suit and ward off all evil.

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: Pietra, Peter [mailto:(b) (6)@dhs.gov]
Sent: Thursday, December 17, 2009 2:26 PM
To: Bird, Rose M
Cc: (b) (6)(b) (6) TSA HQ; (b) (6) <CTR>; Bird, Rose M; Holzerland, William
Subject: RE: Complaint - Edward Hasbrouck

(b) (5) We've had no correspondence from Hasbrouck to the TSA Privacy mailbox and no phone calls. His complaint about the zip code was addressed, and clearly did not impact his ability to submit a FOIA, and has no bearing on his claimed ability to sue. My last interaction with him was at CFP last summer, (b) (5)

From: Bird, Rose M [mailto:(b) (6)]
Sent: Thursday, December 17, 2009 2:13 PM
To: Pietra, Peter
Cc: (b) (6)(b) (6) TSA HQ; O'Brien, David <CTR>; Bird, Rose M; Holzerland, William
Subject: FW: Complaint - Edward Hasbrouck

Peter,
This is the issue Mr. Hasbrouck left the message about. Per my conversation with (b) (6) today, this was handled by TSA FOIA. (b) (5)

Rose Bird
Director, Privacy Incidents and Inquiries
Privacy Office
U.S. Department of Homeland Security
Telephone: (b) (6)
Fax: (703) 235-0442
Email: (b) (6)

From: (b) (6)(b) (6) <TSA HQ> [mailto:(b) (6)(b) (6)@dhs.gov]
Sent: Tuesday, November 03, 2009 10:14 AM
To: Bird, Rose M
Subject: RE: violations of FOIA by TSA

Will do.

(b) (6)

From: Bird, Rose M
Sent: Thursday, December 17, 2009 2:44 PM
To: Holzerland, William
Subject: RE: Complaint - Edward Hasbrouck

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**Transportation
Security
Administration**

December 24, 2009

Mr. Edward Hasbrouck
The Identity Project
1736 Franklin Street, 9th Floor
Oakland, CA 94612

Re: TSA10-0179

Dear Mr. Hasbrouck:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Transportation Security Administration (TSA), dated December 18, 2009, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on December 24, 2009. Specifically, you requested access to and copies of the most recent version of TSA Operations Directives or Management Directives.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As the subject matter of your request is of substantial interest to two or more components of this Department or of substantial interest to another agency, we will need to consult with those entities before we issue a final response. Due to these unusual circumstances, TSA will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

As it relates to your fee waiver request, I have reviewed your letter thoroughly and have determined that you have not presented a convincing argument that you are entitled to a blanket waiver of fees.

The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government;"
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;

- (4) Whether the contribution to public understanding of government operations or activities will be "significant;"
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

As a requester, you bear the burden under the FOIA of showing that the fee waiver requirements have been met. Based on my review of your December 18, 2009 letter and for the reasons stated herein, I have determined that your fee waiver request is deficient because your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to media requestors. As a media requestor you will be charged 10-cents a page for duplication, although the first 100 pages are free. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

You have the right to appeal the determination to deny your fee waiver request. In the event that you may wish to appeal this determination an administrative appeal may be made in writing to Kimberly Walton, Special Counselor, Office of the Special Counselor, Transportation Security Administration, 601 South 12th Street, East Building, E7-121S, Arlington, VA 20598-6020. Your appeal **must be submitted within 60 days** from the date of this determination. It should contain your FOIA request number and state, to the extent possible, the reasons why you believe the initial determination should be reversed. In addition, the envelope in which the appeal is mailed in should be prominently marked "FOIA Appeal." Please note the Special Counselor's determination will be administratively final. Your envelope and letter should be marked "Freedom of Information Act Appeal." The implementing Department regulations establish the criteria under which the FOIA is administered. Copies of the FOIA and regulations are available at www.DHS.gov.

Your request has been assigned reference number **TSA10-0179**. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at 866.364.2872.

Sincerely,



for
Kevin J. Janet
FOIA Officer
Freedom of Information Act

www.dhs.gov